

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

v.

JULIUS DARNEL ROBERTS,  
Defendant.

No. CR-02-282-FVS

ORDER DISMISSING DEFENDANT'S  
§ 2255 MOTION WITHOUT  
PREJUDICE

**Before the Court** is Defendant's motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. (Ct. Rec. 106).

On October 21, 2005, the Court received a mandate from the Ninth Circuit Court of Appeals with a limited remand for further proceedings consistent with *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005). The Court directed counsel to be appointed to represent the Defendant and set a briefing schedule for the parties to address the question of whether the original sentence imposed in this case would have been materially different had the Court known the Sentencing Guidelines were advisory. The Court answered the question posed by the remand in the negative. The Defendant appealed, Ct. Rec. 99, and that appeal remains pending. On July 24, 2006, the Defendant filed the present motion under section 2255.

The Defendant's Section 2255 motion is dismissed pending

1 resolution of his direct appeal. See *United States v. Deeb*, 944 F.2d  
2 545, 548 (9th Cir. 1991) ("A district court should not entertain a  
3 habeas corpus petition while there is an appeal pending in this court  
4 or in the Supreme Court.") (citation omitted). Accordingly,

5 **IT IS HEREBY ORDERED** that the Defendants Motion under 28 U.S.C. §  
6 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal  
7 Custody (Ct. Rec. 106) is **DISMISSED WITHOUT PREJUDICE**.

8 **IT IS SO ORDERED.** The District Court Executive is hereby directed  
9 to enter this order and furnish a copy to the **DEFENDANT**.

10 **DATED** this 16th day of August, 2006.

11  
12 s/ Fred Van Sickle  
13 Fred Van Sickle  
14 United States District Judge  
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